



BEFORE THE ZONING COMMISSION OR
BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA



FORM 150 – MOTION FORM

THIS FORM IS FOR PARTIES ONLY. IF YOU ARE NOT A PARTY PLEASE FILE A
FORM 153 – REQUEST TO ACCEPT AN UNTIMELY FILING OR TO REOPEN THE RECORD.

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.: 20549

Motion of: ☐ Applicant ☐ Petitioner ☒ Appellant ☐ Party ☐ Intervenor ☐ Other _____

PLEASE TAKE NOTICE, that the undersigned will bring a motion to:

Stay issuance of a Certificate of Occupancy at 1323 E Street SE pending resolution
of the appeal on the merits of the case. See statement

Points and Authorities:

On a separate sheet of 8 ½" x 11" paper, state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map and where appropriate a concise statement of material facts. If you are requesting the record be reopened, the document(s) that you are requesting the record to be reopened for must be submitted separately from this form. No substantive information should be included on this form (see instructions).

Consent:

Did movant obtain consent for the motion from all affected parties?

- ☐ Yes, consent was obtained by all parties ☐ Consent was obtained by some, but not all parties
☒ No attempt was made ☐ Despite diligent efforts consent could not be obtained


Further Explanation: _____

CERTIFICATE OF SERVICE

I hereby certify that on this 1st 6th day of September Month, 2nd 0th 2nd 1st

I served a copy of the foregoing Motion to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of Planning

in the above-referenced ZC or BZA case via: ☐ Mailed letter ☐ Hand delivery ☒ E-Mail ☐ Other _____

Signature: 

Print Name: Corey Holman, Authorized Representative of ANC 6B

Address: 921 Pennsylvania Ave SE

Phone No.: 301-664-4132

E-Mail: 6B06@anc.dc.gov

Board of Zoning Adjustment
District of Columbia
CASE NO.20549
EXHIBIT NO.39

September 16, 2021

Frederick Hill, Chair
Board of Zoning Adjustment
441 4th Street NW, Suite 200/210-S
Washington, DC 20010

Re: Motion to Stay Issuance of Certificate of Occupancy at 1323 E Street SE, BZA Appeal Case #20549

Chairperson Hill and Members of the Board of Zoning Adjustment,

ANC 6B brings this motion seeking to protect its constituents and the District of Columbia from harm and damages by requesting the Board of Zoning Adjustment ("BZA") stay issuance of a certificate of occupancy at 1323 E Street SE (Square 1043, Lot 0166) until BZA Appeal #20549 is decided on the merits. The appeal is of the Department of Consumer and Regulatory Affairs ("DCRA") and the Zoning Administrator's ("ZA") determinations in issuing building permit B2103902 ("Original Permit"). The proposed project is for a DoorDash DashMart last mile distribution hub.¹

DCRA and the ZA determined in the original Permit that three full size parking spaces and a full-size loading berth are required. The Applicant initially represented that the site included four zoning-compliant parking spaces and a loading berth. However, after this appeal was filed, the ZA and DCRA reversed course and issued Permit B2109853 on August 9 ("First Revised Permit"), requiring only two parking spaces and created a novel zoning item, the post-ZR58 lawfully existing non-conforming loading berth.²

On August 23, DCRA issued Certificate of Occupancy CO2102980 ("Original CofO"). ANC immediately notified the ZA of material falsehoods in the First Revised Permit, including fabrication of site plan dimensions to manufacture zoning-compliant parking spaces.

On September 10, 2021, a new survey was taken of the property. On September 14, 2021, DCRA issued a notice to revoke the Original Permit, the First Revised Permit, and the Original

¹ ANC 6B will update its statement of appeal including a motion to amend the appeal to incorporate further decisions of the Zoning Administrators through successive permit revisions, certificate of occupancy issuance, notices of revocation thereof, and then restoration of the permit and revisions. As of filing this motion, the first writing of the earliest determination was 38 days ago.

² The Zoning Regulations of 2016 permit building owners to continue to use lawfully existing "nonconforming structures," that became nonconforming after they were built through operation of law. 11 DCMR Sub. C. s. 201.2. However, the ZRs specifically excludes parking and loading from the definition of "nonconforming structures." 11 DCMR Sub. B. s. 101.2 ("Nonconforming Structure: A structure lawfully existing at the time this title or any amendment to this title became effective that does not conform to all provisions of this title or such amendment, other than use, parking, loading, and penthouse requirements.") (Emphasis added). The ZRs prohibit DCRA from issuing a certificate of occupancy unless the vehicle parking spaces have been constructed in accordance with an approved parking plan in full compliance with ZRs (11 DCMR Sub. C s. 700), and the loading facilities have been constructed in accordance with the approved loading plans of the ZR (11 DCMR Sub. C s. 900).

CofO pending correction. Faced with evidence of the Applicant's repeated material misrepresentations regarding the size of the site's parking spaces and loading berth, the ZA should have required the Applicant to either provide zoning compliant parking and loading or to seek a Special Exception to these requirements from the BZA.

On September 15, DCRA again reversed course by issuing permit B2112156 ("Second Revised Permit"), requiring neither compliant parking nor loading. The ZA determined that DoorDash does not need to meet otherwise applicable parking and loading requirements because the site includes nonconforming parking spaces and a nonconforming loading berth, a novel interpretation of the zoning regulations authorized by neither the ZR58 nor ZR16. As of filing, according to DCRA's SCOUT website, the ZA has not issued a Certificate of Occupancy related to this Second Revised Permit.

Pursuant to Subtitle Y, Section 407 of the Zoning Regulations, ANC 6B brings this motion to stay issuance of a Certificate of Occupancy until the board can address the appeal on the merits because:

1) ANC 6B is likely to succeed in the appeal

A) This building was built after the introduction of ZR58. At no point in the entirety of ZR58 or ZR16 were non-conforming parking spots or a loading berth ever permitted for a building built after the implementation of ZR58. The ZA's creation of a concept not in the zoning regulations is likely to be rejected by the BZA or, at the very least, requires rigorous examination by the Board.³

B) The ZA's determination in the First Revised Permit that a non-conforming loading berth of 12' x 26' doesn't address the other aspects related to loading berth. Specifically, the loading berth does not meet the size and layout requirements of C-905.2 of a vertical clearance of 14 feet, C-908.3 for screening, C-905.4(d) for a horizontal loading platform and likely other shortcomings. These aspects from the appeal of the Original Permit will likely be upheld by the BZA.

C) Under ZR58 and ZR16 there has never been a way to authorize a loading berth of 24 or 26 feet of depth. Further, there has never been a way to authorize a parking space less than 16 feet in length. The only potential mechanism for lawfully authorizing these deviations from the size requirements of ZR58 or ZR16 is the issuance of a Special Exception or Variance by the BZA. No such Special Exception or Variance was ever issued for the property. This means either that (1) the building was initially constructed with a compliant loading berth that has since been replaced during an unauthorized

³ ZR 58 Section 2115.11 specifically allowed waiving of dimensional requirements only in a managed parking lot which this lot clearly never was. Further ZR16 B-101.2 specifically exclude non-conforming parking from being included in the definition of "nonconforming structure" by defining it as "[a] structure lawfully existing at the time this title or any amendment to this title became effective that does not conform to all provisions of this title or such amendment, other than use, parking, loading, and penthouse requirements."

renovation; or (2) previous owners of the building made material misrepresentations regarding the loading berth. Quite simply, there is no way for a lawfully nonconforming parking space or loading zone to exist in a building built after the adoption of ZR-58.⁴

D) Notwithstanding the first three items, the ZA's determination that there is an existing non-conforming loading zone and parking spaces are belied by the fact that the prior CofO (See Exhibit 17) did not require loading or parking. Per A-204.6, lawfully existing nonconformities disappear after three years of discontinued use. From 2013 to 2020, according to the prior CofO, no parking spaces or loading berths were provided at this building for retail use and thus there is no possibility of lawfully existing non-conforming parking spaces or loading berths, if such a thing were even able to exist. DoorDash's change of use and expansion of use here require all parking and loading spaces to compliant with all dimensional, location, screening, etc. requirements⁵.

2) A stay is in the interest of the ANC 6B Community and broad public for the following reasons:

A) The applicant has shown an inability to handle loading, trash pickup, and parking without blocking the adjacent sidewalk or bike lane and continue double parking blocking the roadway creating unnecessary safety hazards. On the date of filing, applicant's trash service unloaded the property's dumpster while parked in the bike lane.

B) Consistent and regular interpretations of the zoning regulations ensure confidence and faith in the determinations of the ZA. Issuance of a CofO for an appeal likely to succeed undermines this faith.

3) The District Government will be injured and harmed by a CofO in the following ways

A) The current configuration creates the perverse situation where every person parking at the facility will be in violation of 18 DCMR 2405.3(a)⁶. Continuous parking enforcement by the Department of Public Works ("DPW") and continuous regular

⁴ See 11 DCMR Sub. C ss. 712.11, 909.2; 1958 Zoning Regulations ss. 2108.1, 2204.13

^{5 5} Here, the 2013 COO for the building states that the building had a retail use with 4000 sq. ft. of occupied floor space. Therefore, pursuant to Section 901.1, no loading berth was required because the sole use for the building had less than 5,000 sq. ft. of occupied floor space. Building Permit No. B2103902 states that the building will have a storage, stock, and shipping use with 5,700 sq. ft. of occupied floor space. Pursuant to Section 901.1, PDR uses with between 5,000 and 25,000 sq. ft. of occupied floor space require a minimum of one loading berth. Both the change in use (from Retail to Storage, Stock, and Shipping) and the 42.5% expansion of use (from 4000 sq. ft. of occupied floor space to 5,700 sq. ft. of occupied floor space) triggers Section 901.5 and 901.6's requirements for additional loading berths because one loading berth is now required where none were previously required, and the gross floor area of the use will be expanded by 25%.

^{6 6} "No person shall park a motor vehicle or trailer, whether occupied or not, in any of the following places: On the public parking between the sidewalk space and the building line...."

requests for parking enforcement will place an undue burden on DPW when the appeal is likely to succeed.

B) The applicant has already shown a wanton disregard for public space regulations. Earlier in the project, the applicant placed a dumpster in public space. Since then, the applicant has painted parking space that extend into public space. Continued enforcement by the District Department of Transportation for public space violations places an undue burden on the agency when a CofO appeal is likely to succeed.

4) DCRA, Property Owner, and DoorDash will not be harmed by a stay because

A) The appeal hearing is scheduled for December 1, a relatively short distance away from this motion.

ANC 6B requests the BZA grants this motion to stay issuance of a Certificate of Occupancy until the case is decided on the merits. Thank you for your attention in this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Corey Holman", with a horizontal line underneath it.

Corey Holman, Commissioner 6B06

Authorized Representative of Appellant, Advisory Neighborhood Commission 6B